

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Adopt Article 7, Sections 6580, 6582, and 6584
Pertaining to Continuing Education for Private Applicators

UPDATE OF THE INITIAL STATEMENT OF REASONS

The originally proposed regulatory action was noticed in the California Regulatory Notice Register on December 9, 2005.

During the 45-day public comment period, the Department of Pesticide Regulation (DPR) received one comment on the originally proposed text. The comment is discussed under the heading "SUMMARY AND RESPONSE TO COMMENTS RECEIVED" of this Final Statement of Reasons. The comment has been added to the rulemaking file.

DPR has adopted Article 7, Private Applicators sections 6580, 6582, and 6584 of Title 3, California Code of Regulations (3 CCR). The pesticide regulatory program activities that will be affected are those pertaining to private applicator certification. In summary, this action establishes private applicator continuing education requirements, as well as clarifies certification requirements.

DPR is mandated by law to regulate the sale and use of pesticides to protect the public health and the environment. Existing law requires certification of pesticide applicators who use or supervise the use of restricted materials. Both DPR and the U.S. Environmental Protection Agency (U.S. EPA) designate certain pesticides as restricted materials due to their potential danger to human or environmental health. DPR administers California's certification program that was established in 1976 with final regulations adopted in 1980. The program follows standards set forth in Title 40 of the Code of Federal Regulations Part 171, and has been approved by U.S. EPA. Certification ensures that pesticide applicators have demonstrated sufficient knowledge to apply pesticides safely and legally.

In 1997, Food and Agricultural Code (FAC) sections 14090-14099.5 separated the private applicator certification program from the issuance of a restricted materials permit and established a continuing education program for certified private applicators. A private applicator, as defined in 3 CCR section 6000, is an individual who uses, or supervises the use of, a pesticide to produce an agricultural commodity on property owned, leased, or rented by him/her or his/her employer; or a householder who uses, or supervises the use of, a pesticide outside the confines of a residential dwelling to control pests on residential property owned, leased, or rented by him/her.

The private applicator certification program is administered by the county agricultural commissioners (CACs) who certify and/or recertify 7,000 private applicators every year statewide. A private applicator must initially take a DPR-prepared examination given by the CAC to obtain a private applicator certificate that may be issued for up to three years. FAC section 14096 authorizes the private applicator to renew the certificate through continuing

education or re-examination. FAC section 14099 provided the hours required to renew a certificate based on continuing education. However, subsection 14099(g) included a provision to sunset section 14099 on January 1, 2003, and therefore, the continuing education requirements were repealed.

DPR adopted section 6580 to specify that before a person receives a new private applicator certificate, a Private Applicator Certificate Application form PR-PML-045 (Rev. 12/04) shall be submitted to the CAC, and the applicant take and pass the private applicator examination in order to demonstrate knowledge and proficiency required to use restricted materials. No fee is required to be submitted with the application. The private applicator certificate would be valid for up to three years in accordance with FAC section 14095. The Private Applicator Certificate Application form was incorporated by reference since it would be impractical to publish this document in 3 CCR.

Section 6582(a)(1) specifies that a certified private applicator who wants to renew his/her certificate must submit a Private Applicator Certificate Application form PR-PML-045 (Rev. 12/04) to the CAC no sooner than 120 days prior to, and no later than 90 days after, the expiration date of the certificate. DPR established this window for renewal, as this time period better coincides with CACs issuing restricted material permits. CACs verify private applicator certification when issuing restricted material permits.

Additionally, section 6582(a)(2) specifies that the private applicator needs to complete the required continuing education hours during the time the certificate is valid, or take and pass the private applicator certificate examination before renewing his certificate. However, in the event the private applicator does not renew his certification with the above time frame, subsection (b) requires he/she to take and pass the private applicator certificate examination.

Section 6584(a) specifies the continuing education hours needed from topic areas described in section 6512(e)(1). FAC section 14095 specifies that private applicator certificates be issued for a period of three years, except that the term of the initial private applicator certificate is based on the first letter of the surname. Therefore, in some instances, licenses could be valid for one year, two years, or even ten months. It is only appropriate to proportionately reduce the number of continuing education hours required to renew a certificate depending on how long the certificate was valid. This section breaks down the number of continuing education hours required based on when the certificate was issued (i.e., the valid period of the expiring license). These required hours are the same as those that were in FAC section 14099 before the section was repealed. The initial private applicator certificate terms were staggered in order to evenly distribute CAC certification workload over a three-year period.

Section 6584(b) requires continuing education be taken from courses or programs approved pursuant to 3 CCR section 6512.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED

DPR received one comment during the 45-day public comment period from Dan Cismowski, Merced County's Assistant Agricultural Commissioner representing the San Joaquin Valley (SJV) Deputy Pesticide Enforcement Area Group.

Comment: Reasons for changes to proposed text in section 6580:

- Subsection (b): FAC 14092(b) allows CACs to administer an oral exam in certain situations.
- Subsection (b): inserted the word "new" to be consistent with the language in (a).

Response: FAC 14092(b) does allow the CACs to administer an oral exam in certain situations. Since the law addresses examination for a private applicator certificate in the broad and general sense, it is applied to both the administration of exams for both new and renewing private applicator certificates. The regulatory language does not preclude the administration of an oral examination at the discretion of the CAC in either circumstance. The SJV proposed change would be duplicative and does not add clarity; therefore, it is unnecessary.

DPR made nonsubstantive changes to subsection (b) and (c) by adding the words "new" and "county agricultural," respectively, to improve clarity.

Comment: Reasons for changes to proposed text in section 6582:

- Subsection (a)(1): not all permits are renewed by March 31. Also, this would keep the time frame for renewals of PACs consistent with PCAs, QACs, QALs, etc. as specified in section 6510.
- Subsection (b): changed "issued" to "reissued" to maintain renewal theme of the section.

Response: DPR does not agree with the comment to subsection (a)(1). DPR's decision was made for clarity relative to distinct differences in program requirements for the private applicator, i.e., administration by the CAC versus DPR, length of the certificate (three years versus two years), and continuing education hours are different from all other DPR licenses and certificates.

In 1997, legislation enacted (Chapter 705, Statutes of 1995) separated the private applicator certification program from the restricted materials permitting process and established the continuing education program for private applicators. There are no time frames nor any minimum examination or certification requirements to be met when issuing or renewing a restricted material permit, except that the certified commercial or private applicator who will be supervising or applying restricted materials must be identified on the permit. Additionally, a restricted material permit may be issued at any time during the year and amended (to add/change a chemical, commodity, site, or qualified applicator) throughout the valid period of the permit.

DPR will be proposing amendments to section 6510 to reduce the time frames for renewal of all licenses and certificates from the current 12 months to a period of 90 days after expiration of the license or certificate in 2006. This proposal was reviewed and approved by the Agricultural Pest

Control Advisory Committee (APCAC). Establishing the shorter time frames for the private applicator certificate program now will eliminate the need to amend this section in the future.

Extending the grace period to 12 months for renewal does not provide any benefits nor does it extend the period during which continuing education must be obtained (during the valid period of the certificate).

The term "issue" is used consistently throughout the laws and the regulations when referring to the initial issuance or the renewal of licenses or certificates.

Comment: Reasons for changes to proposed text in section 6584:

- The section was reorganized to have language similar to section 6511.
- Also, as written in the proposed regulation, there is a gap from the 24 months in subsection (a)(2) to 25 months in subsection (a)(3) which would need to be fixed if this changed language is not adopted.

Response: Again, DPR chose to establish a new Article 7 for Private Applicators in order to keep the requirements separate and distinct from other DPR licenses and certificates. Rewriting this section to maintain language similar to section 6511 does not add clarity or provide other benefit.

DPR does agree that an inadvertent gap was made when the number of continuing education hours required were broken down based on when the private applicator certificate was issued. DPR has made a nonsubstantive change to the text to correct this oversight. Section 6584(a)(3) now states, "Each private applicator whose certificate has been valid for greater than 24 months to 36 months at the time of renewal . . ."

PUBLIC HEARING

DPR received no requests to hold a public hearing and no hearing was scheduled or held.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does impose a mandate on local agencies or school districts. It does not require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action clarifies an existing requirement that local governmental agencies have a licensed pest control applicator on staff to make agricultural use pest control recommendations on public lands. It does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory change

POSTING REQUIREMENT

Title 3, California Code of Regulations, section 6110, states in part that, "The public report shall be posted on the official bulletin boards of the Department, and of each commissioner's office, and in each District office of the DPR [Division of Pest Management, Environmental Protection and Worker Safety] for 45 days." DPR has posted its Initial Statement of Reasons and Public Report on its official bulletin board, which consists of the Department's Internet Home Page <<http://www.cdpr.ca.gov>>. In addition, copies were provided to the offices listed above for posting.